ORDER **NSUARB - NSPI-P-882**

IN THE MATTER OF THE PUBLIC UTILITIES ACT

-and-

IN THE MATTER OF A CODE OF CONDUCT to govern the relations between **NOVA SCOTIA POWER INC.** and its **AFFILIATES**

BEFORE: Peter W. Gurnham, Q.C., Chair
Kulvinder S. Dhillon, P. Eng., Member

ORDER

WHEREAS Nova Scotia Power Inc. (NSPI) is a body corporate incorporated pursuant to the *Companies Act* and is engaged in the production and supply of electrical energy in Nova Scotia;

AND WHEREAS NSPI is a public utility and its business activities are regulated by the Nova Scotia Utility and Review Board (Board) pursuant to the *Public Utilities Act*;

AND WHEREAS NSPI is the principal operating subsidiary of, and is wholly owned by Emera Inc. (Emera), formerly known as NS Power Holdings Incorporated, a body corporate incorporated pursuant to the *Companies Act* on July 23, 1998;

AND WHEREAS Emera, by itself and through subsidiaries other than NSPI, has a number of business interests and engages in a number of business activities which are not subject to regulation under the *Public Utilities Act;*

AND WHEREAS on March 16, 2001, the Board issued an Order approving an Interim Code of Conduct;

AND WHEREAS on November 9, 2004, the Board issued an Order approving the Final Code of Conduct, effective January 1, 2005;

AND WHEREAS in Board Decision - NSUARB-NSPI-P-882 [2008 NSUARB 61] dated June 9, 2008, the Board stated:

> [57] In order to implement the Board's directive through revisions to the Code, the Board has determined that a consultative process is the best way to

> proceed. Accordingly, the Board orders that Board staff, in consultation with NSPI, interested parties and Liberty, review and make recommendations to the Board for specific revisions to the Code, including the development of a clear and acceptable standard for assessing the benefit to customers from affiliate transactions, no later than October 30, 2008. The Board directs that this process begin with an opportunity for submissions for suggested changes by all interested parties. The proposed revisions suggested by the parties will then be reviewed and considered for inclusion by Board staff when drafting a revised Code. This draft Code will be shared with all parties for their comments prior to the Board approving a final version of the revised Code. Board staff will provide parties with Directions on Procedure and a more detailed timeline on this process in the near future.

AND WHEREAS by letter dated June 27, 2008, the Board advised parties of the timetable with respect to the preparation of revisions to the Code of Conduct and also advised that Board Staff have engaged The Liberty Consulting Group ("Liberty) to assist with the preparation of the Code;

AND WHEREAS the timeline was revised slightly and the revised draft Code of Conduct prepared by Liberty and Board Staff was submitted to the Board on November 28, 2008 and provided to all parties. The Board asked Liberty to lead further dialogue with respect to Section 2.1 and Section 7.0 and asked that any revisions be provided to the Board by January 31, 2009;

AND WHEREAS on February 4, 2009, a redline redraft of the November 28, 2008 Code of Conduct Governing Affiliate Transactions was provided to NSPI and Interested Parties with a February 13, 2009, date for providing any comments;

IT IS HEREBY ORDERED that the NSPI Revised Code of Conduct Governing Affiliate Transactions, attached hereto, be approved, effective June 1, 2009.

DATED at Halifax, Nova Scotia, this 24th day of February, 2009.

Nancy McNeil

Clerk of the Board

Document : 155445.1

RAR

NSPI REVISED CODE of CONDUCT governing Affiliate Transactions

1.0 PURPOSE

1.1 The primary purpose of this Code of Conduct is to ensure that all transactions Nova Scotia Power Inc. (NSPI) enters into with affiliates[1] are designed and carried out in a manner reasonably expected to produce demonstrable benefit to NSPI customers, when compared with all other available options.

2.0 STATEMENT OF PRINCIPLES

2.1 NSPI will precede any transaction by which it acquires from or provides to an affiliate any goods, services, leases, asset transfers, or other exchanges of value, with a sound, objective, and transparent process and reasonable documentation;

(a) The process and documentation shall identify and then compare transacting with an affiliate to: (i) provisioning through other, reasonably available commercial alternatives, (ii) self-provisioning by NSPI, (iii) joint NSPI/third-party provisioning, (iv) joint NSPI/affiliate provisioning, and (v) such other arrangements as may be reasonably available under the applicable circumstances at the time of the decision.

(b) For transactions below $125,000 in aggregate value (determined by adding together all similar transactions with the same affiliate during any consecutive 12-month period), the comparison of alternatives and documentation may be abbreviated as appropriate to avoid adding materially to the cost of the transaction, provided that NSPI provides sufficient documentation to demonstrate that the transaction complies with the demonstrable benefits standard of Section 1.1 of this Code and that NSPI's actions to meet that standard preceded the decision to transact with an affiliate.

2.2 NSPI will only enter into affiliate transactions when doing so has been demonstrated through sound, documented analysis to be the best available option for NSPI's customers at the time.

2.3 NSPI's customers will not otherwise bear the risks or share the rewards of an affiliate's activities.

2.4 Competition in markets where NSPI's affiliates are active will not be impaired by nonmarket behavior by NSPI.

[1] For the purpose of this Code of Conduct, the term "affiliate" shall be interpreted in accordance with Sections 2(2), 2(3), and 2(4) of the Nova Scotia Companies Act.

3.0 CORPORATE STRUCTURE

Objectives

To separate regulated electric and other utility services[2] from affiliate activities.

Protocols

3.1 EMERA, the parent company of NSPI, will create and maintain a corporate organizational structure which ensures that regulated electric and other utility services are provided solely by NSPI and by no other affiliate.

3.2 NSPI will maintain a complete list of all of its affiliates. The list will include the name and address of each affiliate, a brief description of its activities and the names, addresses and telephone numbers of all of its officers. The list will be kept on open file with the Nova Scotia Utility and Review Board (Board).

4.0 UTILITY MANAGEMENT

Objectives

To dedicate to the provision of regulated services, in terms of quality and numbers, a management team capable of maintaining a superior level of performance, at the same time as NSPI affiliates are expanding into other business activities.

Protocols

4.1 NSPI will maintain a management team capable of delivering a superior level of performance.

4.2 NSPI will prepare and submit to the Board an annual report which summarizes utility performance. The report format, and contents thereof, shall be agreed upon in advance between NSPI and the Board.

5.0 UTILITY FINANCING

Objectives

To maintain a capital structure for NSPI which is in accordance with applicable Board decisions.

Protocols

5.1 NSPI's capital structure will reflect the Board approved capital structure.

5.2 NSPI's capital structure will not be used to subsidize affiliate activities. Affiliate risks or losses will not be borne by NSPI's customers.

---

[2] Regulated electric and other utility services are those covered by the Public Utilities Act.

5.3 NSPI shall not, without the prior approval of the Board, provide loans to, guarantee the indebtedness of, or invest in securities of an affiliate.

6.0 FAIR DEALING

Objectives

To avoid discrimination in the matter of pricing or in any other manner against non-affiliated buyers of regulated electric utility services.

To avoid subsidy by NSPI of the costs, revenues, or activities of affiliates.

Protocols

6.1 NSPI will provide access to regulated utility services on a non-discriminatory basis and will not in respect of those utility services directly or indirectly state, imply or offer any preference or favored treatment to NSPI's affiliates or persons purchasing affiliate goods and services.

6.2 The financial records of NSPI, as well as NSPI's information systems, will be kept separate from those of its affiliates.

6.3 NSPI will not provide confidential customer information to affiliates or other persons without prior customer consent.

6.4 NSPI will provide customer information to NSPI affiliates and non-affiliates in a nondiscriminatory manner.

6.5 NSPI will charge Board approved rates for all regulated electric and other utility services provided to affiliates.

6.6 NSPI will charge and be charged a market rate of return for any assistance it provides to or receives from affiliates by way of a guarantee or loan.

6.7 NSPI will charge and be charged prices which reflect fair market value (FMV) for all nonregulated utility goods, services, leases, asset transfers, or other exchanges of value provided to or from affiliates, provided that in all cases NSPI shall charge for such goods and services no less than its fully allocated costs.

6.8 NSPI shall determine and document all FMV prices through the use, where practicable, of competitive tendering or quotes; otherwise NSPI shall use the most direct alternative means of establishing FMV pricing, including without limitation bench marking studies, catalog pricing or recent market transactions.

6.9 Where prices based on FMV cannot be determined through reasonably direct and substantially supported means, NSPI will document the inability to make such determination, and will charge to its affiliates prices that reflect the utility's fully-allocated costs for the goods and services provided.

6.10 Where a capital asset is transferred from NSPI to an affiliate or from an affiliate to NSPI, that asset will be transferred at a price to be approved by the Board in advance.

6.11 The costs of corporate support services[3] will be fairly allocated between NSPI and its affiliates. The allocation factor employed will depend on the nature of the corporate support services.

6.12 NSPI shall make no changes in responsibility for the performance of any services regularly provided for or by any affiliate (including but not limited to corporate support services), absent a prior analysis demonstrating that such change is the best available option for NSPI customers.

7.0 DEMONSTRATING CODE COMPLIANCE

Objectives

To separately and fully account for the value of goods, services, financial and other support delivered to or from NSPI and its affiliates.

Protocols

7.1 NSPI shall report annually to the Board the following information:

(a) A detailed listing of all assets, services and products provided to and from NSPI and each of its affiliated companies.

(b) Each item on the listing should indicate the price received or paid and, as appropriate, the relevant fully allocated costs or market values.

(c) Where fair market value is used, an explanation should be provided as to how the value was determined, including the comparative source for the value.

(d) Where cost allocations are involved, a description of the cost allocators and methods used to make the allocations should be included.

(e) A summary of corporate services and the methodology for ensuring fair allocations of these costs.

7.2 NSPI shall be subject to such audits of affiliate transactions from time to time as the Board determines to be appropriate.

7.3 All newly entered, renewed, extended, or otherwise altered or amended NSPI agreements with an affiliate (excepting those energy transactions addressed by the agreement between NSPI and Board Counsel as recorded in 2007 NSUARB 174, at para. 42) will

[3] Corporate support services are those Management and Administrative services which are provided to affiliates by NSPI. Examples include Board of Directors' costs. Public and Regulatory Affairs, Finance and Administration, Corporate Services, Legal, Human Resources and Information Technology.

contain provisions sufficient to require and assure that the affiliate will make available all of its books and records (notwithstanding any agreement the affiliate has with any third party) as may in the judgement of the Board be necessary to: (a) examine the market competitiveness of the terms and conditions of such affiliate agreement with reference to any similar agreements the affiliate has with third parties, or (b) verify that agreements between the affiliate and NSPI are independent of and in no way linked to agreements between the affiliate and third parties in a manner that causes financial or other harm or loss to NSPI. Moreover, if executed by NSPI no such commitment shall be considered binding, or effective in the absence of such provisions.

7.4 NSPI shall submit to the Board annually, all internal Code of Conduct implementation guidance along with a summary of significant interpretations or judgements made by NSPI related to the Code during the year.

7.5 In order to monitor compliance, the Board at any time may review the records of NSPI and the records of NSPI affiliates as the Board deems required in assuring compliance with any provisions of this Code and with the duty to deal at arm's-length with affiliates.

7.6 NSPI will take the following actions to establish that each transaction with an affiliate is demonstrably the best option from among those reasonably available at the time for its customers.

(a) Where NSPI decides to transact with an affiliate, it shall document, contemporaneously with the time of the decision, efforts undertaken to identify commercially available alternatives, the alternatives identified, and a description of the basis for its decision to transact with an affiliate.

(b) This documentation shall contain a summary table or narrative that identifies all alternatives considered, lists each criterion considered material in deciding with whom to transact, compares each alternative under each such criterion, and explains the reasons for selecting an affiliate.

(c) NSPI's documentation shall contain summaries of all verbal communications substantially affecting its decision to transact with an affiliate, which summaries shall be prepared by an identified NSPI participant as soon as practicable following such communication.

(d) The documentation required to be maintained regarding affiliate transactions shall be prepared by or under the direction of an NSPI manager responsible for the costs that the transaction will cause NSPI to incur, and shall be accompanied, in all cases where transactions individually or in aggregate over any consecutive 12-month period exceed $125,000, by an NSPI officer's level signifying the officer's review and approval of transaction decisions made and the sufficiency of the data gathering and analysis underlying them.

(e) To the extent that emergency circumstances require the waiver or delay in performing or documenting any normal step in the data gathering, analysis, and decision process, those circumstances shall be described in a document that shall be accompanied by a responsible NSPI officer's signature signifying the officer's verification that conditions were sufficient to warrant the suspension of normal steps or delay in documenting them.

7.7 Additional requirements shall apply to all "Large Transactions" with affiliates, which consist of those that meet the following criteria:

(a) One-time transactions with a value of$500,000 or more;

(b) Periodic, related transactions reasonably expected to reach in aggregate $750,000 or more in any consecutive 12-month period;

(c) Transactions with: (a) a duration of 24 months or greater, taken alone or in combination with related transactions, and (b) with a value of $250,000 or more.

(d) Loans or assignments of personnel between NSPI and an affiliate and involving work in more than 6 months of any consecutive 12-month period, or where costs of all employees involved in related activities or projects are reasonably expected to exceed $500,000.

7.8 NSPI shall for Large Transactions:

(a) Prepare an analysis of the costs of self-provisioning by NSPI, which shall specifically identify and exclude fixed NSPI costs *(i.e.,* those that NSPI will continue to bear during the term of the agreement).

(b) Prepare a description of any solicitations of terms and conditions from third-party suppliers.

(c) Prepare a documented analysis that: (i) identifies the potential third-party suppliers from whom interest was solicited, (ii) the identities of any of them disqualified from submitting offers, (iii) the reasons for such disqualification, (iv) the number and identity of offers received, (v) a list of all criteria used to evaluate the transaction and a description of the relative importance applied to each such criterion, (vi) a ranking of each bid received by cost and by each criterion considered, and (vii) a justification of the decision that addresses the significance of each decision criterion identified as relevant.

7.9 In the event that solicitation of third-party offers is not used for a Large Transaction, NSPI shall prepare a description of: (a) the justification for failing to use such solicitations, (b) a description of alternate means used to identify available commercial alternatives, (c) the criteria used to evaluate and compare those alternatives, and (d) a description of the process and reasons for choosing to transact with an affiliate.

7.10 In the event that NSPI contracts with an affiliate acting in concert with a third-party (whether by partnership, joint venture, or otherwise), NSPI shall document its efforts to consider the propriety, possibility, advantages, and disadvantages of NSPI's working similarly with a third-party as an alternative.

8.0 EMPLOYEE COMPLIANCE

Objectives

To ensure understanding of and compliance with this Code of Conduct.

Protocols

8.1 NSPI will inform all its managers and employees directly involved in affiliate activities of their expected behavior relative to the Code of Conduct and will undertake annual management reviews to ensure compliance.

9.0 GENERAL

9.1 All reports referred to in this document shall be provided by April 30 in respect of each preceding year.

9.2 This Code of Conduct replaces the Code of Conduct dated November 9, 2004 (effective January 1, 2005), and shall become effective on June 1, 2009.